

**Rule 408. Informal Proceedings**

**(a) Contents of the Application.** Application for informal probate or appointment proceedings shall contain information required by the code and the approximate value of the following categories of assets:

## Probate Assets

Homestead \$ \_\_\_\_\_

Other Real Estate \$ \_\_\_\_\_

Cash \$ \_\_\_\_\_

Securities \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

## Non-Probate Assets

Joint Tenancy \$ \_\_\_\_\_

Insurance \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

Approximate Indebtedness \$ \_\_\_\_\_

In all estate proceedings, whether testate or intestate, the application must contain a statement that specifically eliminates all heirs or devisees other than those listed in the application.

***Probate Committee Comment\* - 2015 Amendments****Examples (These are not intended to be exhaustive)*

*The statements will necessarily vary, depending upon who survives the decedent, and must close out any class affected:*

*(1) Where only the spouse survives, the application should state "That decedent left no surviving descendants (including adopted descendants); and was not in the process of adopting an individual at the time of the decedent's death."*

*(2) Where only children survive, the application should state "That the decedent left surviving no spouse; no children (including adopted children) other than herein named; and no descendants of any deceased children."*

*(3) Where the spouse and children survive, the application should state "That the decedent left surviving no children (including adopted children) other than herein named and no descendants of any deceased children; and was not in the process of adopting an individual at the time of the decedent's death."*

*(4) Where only brothers or sisters of decedent survive, the application should state "That the decedent left surviving no spouse; descendants; parents; brothers or sisters other than herein named; and no descendants of deceased brothers or sisters."*

*(5) Where only first cousins survive, the application should state "That the decedent left surviving no spouse; descendants; parents; brothers or sisters or descendants thereof; grandparents; aunts or uncles; and no first cousins other than herein named."*

*(6) In all cases, the application should state either:*

*(a) That all the heirs-at-law survived the decedent for 120 hours or more; or*

*(b) that all the heirs-at-law survived the decedent for 120 hours or more except the following: (name or names).*

*(7) In all cases where a spouse and children survive, the application should state either:*

*(a) That all of the descendants of the decedent are also descendants of the surviving spouse; or*

*(b) That one or more of the descendants of the decedent are not also descendants of the surviving spouse.*

**(b) Will Testimony.** The registrar shall not require any affidavit or testimony with respect to execution of a will prior to informal probate if it is a self-proved will or appears to have been validly executed.

*\*Original Advisory Committee Comment - Not kept current.*

***Probate Committee Comment\****

*Applicants for informal probate of a will which is not self-proved are encouraged to preserve evidence concerning the execution of the will if a formal testacy proceeding may later be required or desired.*

**(c) Appearances.** The applicant is required to appear before the registrar unless represented by counsel. The registrar may also waive appearance by counsel.

**(d) Informal Proceedings: Notice of Informal Probate of Will and Informal Appointment of Personal Representative.** In informal proceedings, notice of appointment of a personal representative shall be given after the registrar issues the order appointing the personal representative. Proof of placement for publication shall be filed with the court administrator before letters will issue. Where mailed notice is required, an affidavit of mailing of the order appointing the personal representative shall be filed with the court administrator before letters will issue. If the informal proceedings include the informal probate of a will, the notice shall include notice of the issuance of the statement of informal probate of the will. Where creditors' claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for informal probate and all interested persons as defined by the code and shall include in appropriate cases the attorney general, foreign consul and lawyers representing interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

(1) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the code or by law.

(2) The right to receive maintenance payments during administration of the estate as provided in the code or by law.

(3) The right to take an elective share equal to the value of the elective-share percentage of the augmented estate, determined by the length of the marriage, as provided in the code and the homestead as provided in the code or by law.

(Amended effective July 1, 2015.)